IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4696 of 2006
With
SPECIAL CIVIL APPLICATION No. 3036 of 2006
With
SPECIAL CIVIL APPLICATION No. 3907 of 2006
With
SPECIAL CIVIL APPLICATION No. 3911 of 2006
With
SPECIAL CIVIL APPLICATION No. 3942 of 2006
With
SPECIAL CIVIL APPLICATION No. 2372 of 2006
With
SPECIAL CIVIL APPLICATION No. 2404 of 2006
With
SPECIAL CIVIL APPLICATION No. 2459 of 2006
With
SPECIAL CIVIL APPLICATION No. 2477 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 & 2 YES; 3 to 5 NO

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GUNVANTIBEN DAYARAMBHAI PATEL & OTHERS- Petitioner(s)
Versus
UNION OF INDIA - Respondent(s)

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Appearance :
MS. KRUTI M SHAH, MR AM PAREKH, MR MA SAPA, MR DHAVAL N VAKIL, MR SHAILESH C SHARMA, MR PRAFUL B PATEL, MR AG JOSHI, MR YV VAGHELA, MR AJ SHASTRI for Petitioners.
MR JITENDRA MALKAN Asstt Solicitor General of India for Respondent.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 23/03/2006

ORAL JUDGMENT

1. Rule. Mr.Jitendra Malkan, learned Assistant Solicitor General of India, waives service for the respondent. All these petitions are voicing the same or similar grievance and seeking similar relief of direction to the Regional Passport Officer to, in effect, amend the passport so as to incorporate the correct date of birth. There was a limited consensus that detailed examination and narration of facts of each petition was not required and the legal issue involved in the matter was squarely covered by the judgment dated 24.2.2006 of this Court (Coram: M.R.Shah, J.) in Special Civil Application No.2716 of 2006 and allied matters, wherein important observations, as under, are made:

> *"(7).....Therefore, this Court fails to appreciate that why such order of this Court requires to be obtained by the petitioner/s herein and/or any of applicant or the person who wants to have necessary correction in the passport in the date of birth and/or the place of birth on the basis of the certificate issued by the competent authority under the provisions of the Births and Deaths Registration Act and to obtain the simple order by this Court merely directing the passport authority to look into the same and to pass the order in accordance with law..... This Court is of the firm*

opinion that for the aforesaid relief when the passport authority itself is correcting the date of birth and/or place and looking into the supporting documents in accordance with law, such petitions are not warranted as the passport authority itself has to undertake such an exercise.....”

“(9) At this stage, learned advocates appearing on behalf of the Passport Authority have relied upon the instructions issued by the Ministry of External Affairs vide No.VI/401/2/5/2001 dated 18.4.2001 which reads as under:

“(a)*Where an applicant is seeking rectification / correction of a mistake in the entry on date of birth / place of birth in the passport, PIA may after verifying / satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.*

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment, PIA may affect the necessary amendment in a passport without insisting on a court order. As per the provisions of Section-21 of the General Clauses Act, 1997, a competent

authority issuing a certificate could also make necessary amendment to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e. a school / educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e Municipal Authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent court of jurisdiction, certifying the valid date of birth / place of birth."

2. The relevant observations of the Division Bench of the Bombay High Court in **JIGAR HARISH SHAH V. UNION OF INDIA AND ANOTHER [AIR 2001 Bombay 60]** are quoted in the aforesaid judgment as under:-

"We, therefore, instead of issuing a direction to the Judicial Magistrate in this matter, direct the Passport Authority itself to hold an enquiry on hearing the petitioner in relation to the petitioner's claim about his correct date of birth and in case the Passport Authority is satisfied with regard to the claim put forth by the petitioner, we further order it to effect the necessary change in the Passport issued in favour of the petitioner."

It is ultimately held that:

> *".....However, in a case where initial entry has been made on the basis of a supportive document issued by one competent authority i.e. a school / educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e Municipal Authorities resulting in conflicting sources of valid proof, and when such request is made with supporting documents, the Passport Authority is required to consider the said application and is required to hold necessary enquiry with regard to genuineness of the same and if the passport authority is satisfied with the same, necessary amendment and / or change can be effected in the passport. However, if after holding necessary enquiry as to the genuineness of the document in respect of the date of birth and place is doubted, in that case, it will be open for the Passport Authority to insist for court's declaratory order and as stated above, from the Civil Court and/or from the competent authority and certainly not from the High Court in a petition under Article 226 of the Constitution of India as the same would amount to entering into disputed questions of fact which the High Court normally would not like to enter into in exercise of the powers under Article 226 of the Constitution of India."*
>
> (emphasis added)

3. With the above observations, all the petitions were disposed relegating the petitioner to move an appropriate application for necessary

correction and/or amendment and/or change in the date of birth and/or place of birth as the case may be and the Passport Authority was directed to consider the same after holding necessary enquiry as stated in the judgment and to pass appropriate order in accordance with law and on merits and in light of the observations made in the judgment. It was further directed that henceforth the passport authority shall not straightaway refuse to entertain the application and/or to accept the application for correction of the date of birth and place of birth without holding any enquiry and shall not straightaway without holding necessary enquiry call upon the applicant to obtain appropriate order from the Court. It was, however, clarified by the learned Assistant Solicitor General that the said order was under consideration for implementation or being carried in appeal.

4. The Passports Rules, 1980, made in exercise of the powers conferred by Section 24 of the Passports Act, 1967, provide in Rule 5, as under:

> "**5. Form of applications:**
>
> **(1)** *An application for the issue of passport or travel document or for the renewal thereof or for any miscellaneous service shall be made in the appropriate Form set out therefor in Part 1 of Schedule III and in accordance with the procedure and instructions set out in such form:*

Provided that ....

Provided further that in the course of any inquiry under sub-section (2) of section 5, a passport authority may require an applicant to furnish such additional information, documents or certificates, as may be considered necessary by such authority for the proper disposal of the application."

(2) ... .
(3) ... .

5.1 The provisions of sub-section (2) of section 5 referred to in the proviso to Rule 5 read as under:

"(2) On receipt of an application under this section, the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing-

(a) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel documents the endorsement, in respect of the foreign country or countries specified in the application; or

(b) issue the passport or travel document with endorsement, or, as the case may

be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or

(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.

(3) Where the passport authority makes an order under clause (b) or clause (c) of sub-section (2) on the application of any person, it shall record in writing a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such copy."

5.2 The form of application prescribed under Rule 5 quoted hereinabove contains, *inter alia,* "Passport Information Booklet" prescribed under the Rules and it clearly stipulates below Clause (4) as under:

> *"**Cautions**:Date of Birth/Place of birth once included in the Passport will not be changed under any circumstances. In case of error applicant will have to make a fresh application enclosing relevant evidence for obtaining fresh passport with correct date and place of birth."*

6. A conjoint reading of the above statutory provisions would clearly indicate that the passport authority is under a statutory obligation to entertain a fresh application for passport showing correct date of birth and it is under an obligation to make necessary enquiries. It, however, does not mean that, in all cases, the passport with necessary corrections has to be issued but the authority is required to record its reasons and, except in the exceptional circumstances mentioned in sub-section (3) of section 5, required to furnish the applicant, on demand, a copy of the reasons recorded in writing for refusing to issue the passport. Therefore, it is obvious that, under the scheme of the Act, Rules and the prescribed guidelines, the proper course of action for the applicant is to make necessary application in the prescribed form either for Miscellaneous Services in Form No.2 or in the prescribed application for new passport in Form No.1 and the passport authority is legally required to entertain and decide the same. In view of the Instructions dated 18.4.2001 quoted hereinabove, the passport authority may require the applicant to obtain an order from a competent Court in case of

request for change on the basis of the certificate issued by an authority other than the one which had issued the original certificate on the basis of which the passport was issued. However, in such case, it should be open for the applicant to surrender the passport for revocation under the provisions of sub-section (4) of section 10 of the Act which read as under:

> ***"10 (4):*** *The passport authority may also revoke a passport or travel document on the application of the holder thereof."*

Thereafter, there may be no legal bar for entertaining a fresh application for new passport and proper enquiry by the authority under the provisions mentioned hereinabove.

7. Learned Assistant Solicitor General of India, Mr.Jitendra Malkan, submitted, on instructions, that, in any case, where part or page of the passport which is laminated is to be corrected or modified, a new passport has to be issued because of impossibility of correcting the entry made on the laminated sheet of the passport.

8. Therefore, having regard to the view already taken by this Court in the aforesaid judgment dated 24.2.2006 in Special Civil Application No.2716 of

2006 and allied mattes and in view of the legal provisions discussed hereinabove, the petitions are disposed with the following directions and suggestions:

(1) The petitioners herein and such other applicants may make appropriate application in Form No.1 or Form No.2, as the case may be, for change or correction in the passport;

(2) Such application shall be accepted and entertained by the respondent and, after enquiry and following the procedure prescribed in the Passports Act, 1967 and the Rules made thereunder, decision thereon shall be taken in accordance with the provisions of section 5 of the Passports Act, 1967;

(3) In case the authority decides not to issue the passport pursuant to the application, it shall record its reasons and, on demand, furnish a copy thereof to the applicant except in exceptional circumstances contemplated in sub-section (2) of section 5 of the Passports Act, 1967;

(4) Then it will be open for the applicant

concerned to take appropriate remedy in accordance with law.

(5) The above process in each such application should be completed by the Passport Issuing Authority within a reasonable time. The Authority should ideally also arrange to officially provide reasonable assistance and guidance to the applicant concerned so as to obviate any unauthorised and improper advice being sought by or given to the unwary or confused applicants.

Rule is made absolute in each petition in the above terms with no order as to costs.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)